Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	
	)	RM 9108
Billing and Collection Services Provided	)	
By Local Exchange Carriers for Non-	)	
Subscribed Interexchange Services	)	

OPPOSITION OF U S WEST, INC.

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July 25, 1997

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I. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") opposes the Petition for Rulemaking (or "Petition") filed by MCI Telecommunications Corporation ("MCI"),[1] which was publicly noticed by the Federal Communications Commission ("Commission").[2] MCI's Petition, while not succumbing to precisely the procedural infirmities found in the earlier-filed America's Carriers Telecommunication Association ("ACTA") Petition,[3] like that Petition fails to demonstrate a "problem" of general applicability such that a rulemaking is the appropriate vehicle for resolving whatever "threat"[4] or

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[1] Petition for Rulemaking, filed May 19, 1997.

[2] Public Notice, MCI Telecommunications Corporation Files Petition For Rulemaking Regarding Local Exchange Company Requirements For Billing And Collection Of Non-Subscribed Services, DA 97-1328, rel. June 25, 1997.

[3] America's Carriers Telecommunication Association Petition for Declaratory Ruling, filed Jan. 17, 1997 ("ACTA Petition").

[4] Petition at i.

"jeopardy"[5] MCI perceives to exist. Like the ACTA Petition, the MCI Petition is replete with undemonstrated conclusory allegations about "imminent interruption of billing and collection services,"[6] by "[s]ome [local exchange carriers] LECs"[7] based on the statements of "a major [unidentified] LEC."[8] To the extent that MCI is concerned about the actions (either threatened or imminent) of any particular LEC, it should pursue the matter through the vehicle of a complaint proceeding, not a rulemaking.

Alternatively, to the extent that MCI asserts that it is entitled to certain billing and collection services because the current tariffed rates associated with LECs' Billing Name and Address ("BNA") tariffs are unreasonable,[9] it should be required to file for an investigation of those tariffs – bearing, as it would, the burden of proof to demonstrate those effective tariffs unreasonable.[10] The provision

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[5] Id. at 2.

[6] Id. at i, 14.

[7] Id. at 2.

[8] Id. at 6.

[9] Id. at 7-8. To the extent MCI complains about the provision of BNA in the context of 10XXX services, its current Petition for Rulemaking is an inappropriate vehicle to air its objections. MCI should file complaints or petitions to suspend and/or investigate against parties it believes are engaging in unreasonable provisioning or pricing practices (see Opposition of U S WEST to the ACTA Petition, ENF. File No. 97-04, filed May 19, 1997) or file a different Petition for Rulemaking seeking the establishment of a specific obligation to provide BNA in a 10XXX context.

[10] To justify suspension of a tariff, significant questions of unlawfulness must be raised and petitioner must demonstrate that immediate and serious harm is likely to occur if the tariff is not suspended. See, e.g., In the Matter of AT&T Communications Revisions to Tariff FCC Nos. 260, 266, 267, 268, 270, 273 and 274; Establishment of Rates and Regulations Applicable to ACCUNET Packet Service, Memorandum Opinion and Order, 56 Rad. Reg. (P&F) 2d 1503, 1508 ¶ 18 (1984); ITT World Communications, Inc., Amendments to Joint Tariff FCC No. 12 for

of BNA, unlike the provision of billing and collections services, has been held to be a common carrier offering, specifically mandated to afford those needing the information to be able to bill the ability to secure the necessary information. MCI should not be permitted to parlay its dissatisfaction with those rates into a "right" for an offering provided voluntarily by companies that also happen to be carriers.

Furthermore, on the merits, MCI's Petition suffers under its own weight. It claims that it is not requesting that LEC billing and collections services be re-regulated.[11] But that is precisely what it is asking, including the regulatory imposition on certain carriers (i.e., competitive local exchange carriers ("CLEC")) of a billing obligation they currently do not have and have refrained from voluntarily assuming.

In essence, MCI wants to be relieved of contractual terms and conditions that it, as a competent party, negotiated. Seeing less of a "benefit of the bargain" than it hoped to enjoy over time, the company that proudly professes to be investing "nearly $2 billion to provide facilities-based local service,"[12] is requesting that it be subsidized for its own appropriate service billing and collections costs in a business

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International Telex Service, 73 FCC 2d 709, 719 ¶ 26 (1979); In the Matter of American Telephone & Telegraph Co., (Long Lines Department) Transmittal No. 11935; and Revisions of the Wide Area Telecommunications Service (WATS) Tariff FCC No. 259, Memorandum Opinion and Order, 46 FCC 2d 81, 85-86 ¶¶ 10-12 (1974); see also generally Arrow Transportation Co. v. Southern Railway Co., 372 U.S. 658 (1963).

[11] Petition at ii, 14.

[12] Letter from Jonathan Sallet, MCI, Chief Policy Counsel to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, dated July 10, 1997 at 1 ("MCI Hundt Letter").

that it has competed in for years, i.e., interexchange services, with respect to popular products and services in a "market sector"[13] that it made a business decision to pursue (10XXX,[14] 1-800-COLLECT,[15] etc.). Having made the decision to develop and promote "non-subscribed" services,[16] which have a less favorable profitability profile than do PIC'd [primary interexchange carrier] services billing, MCI wants to avoid the higher-than-average-costs associated with billing and collections for that lucrative and "substantial portion of the overall interexchange market"[17] which it helped to develop.[18]

MCI seeks to enlist the aid of the Commission to negotiate for it a better bargain than it negotiated for itself and to force unaffiliated carriers to bill for

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[13] Petition at i.

[14] MCI notes that "numerous new entrants in interexchange services have capitalized on 10XXX access." Id. at 4. Yet, apparently, based on MCI's current request, that "capitalization" has not included making the necessary business decisions associated with billing for the services rendered.

[15] Id. at 2 (noting the popularity of this offering).

[16] MCI states that non-subscribed services fill a need that "many American long-distance users have come to expect." Id. at 3. Having created that expectation, one would assume that interexchange carriers ("IXC") would necessarily expect to have to provide the product fulfillment associated with those expectations, which includes billing for the services provided.

[17] Id. at i, 1 ("a significant portion of the [IXC] market"). And see MCI Hundt letter at 15.

[18] MCI spends a significant portion of its Petition extolling the virtues, both economic and social, of non-subscribed services. See, e.g., Petition at i, 10. In this filing, U S WEST does not address the substance of this argument. The services in question might well produce benefits. However, the goodness or value of the services is not strictly material to MCI's request for relief, which essentially seeks a Commission mandate to require others to bill for MCI's (and other IXC's) services. Thus, for the remainder of this argument, U S WEST focuses on MCI's request for relief, independent of the "nature" of the underlying services.

costly-to-bill services at rates or under terms and conditions that ignore the profitability of such billing.[19] The Commission should decline MCI's invitation because to accept it "would discourage the give-and-take process that is essential to successful negotiations"[20] and because MCI's request for relief inappropriately seeks to subsidize interexchange product delivery costs with local exchange billing services.

II. MCI'S REQUESTED RELIEF IS NOT NECESSARILY TEMPORARY

MCI acknowledges that LEC third-party billing and collections services are not common carrier services and are deregulated.[21] And, it professes to not be "seeking a return to common carrier regulation of billing and collection"[22] but to the

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[19] "MCI estimates that non-subscribed services represented approximately **$11.6 billion** in gross revenues." Petition at 1 (emphasis added). And see MCI Hundt Letter at 15. Yet, it asserts that "high fixed costs must be compared with the variable revenue situation and low call volume per customer." Petition at 7. Yet both aspects of this "market sector" had to have been known to MCI and other IXCs when they made the business decision to offer non-subscribed services. Indeed, similar arguments have been made in the past by enhanced services providers ("ESP") and 900 service providers. The services that MCI references in the current Petition are not fundamentally different from those other "event-generated" (id. at 3), "occasional and episodic" (id. at 7) customer choices. The Commission should resolve MCI's instant Petition similarly, i.e., by refusing to mandate that LECs provide third-party billing and collections services for such offerings, absent a LEC's voluntary decision to do so. In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd. 1, 51-55 ¶¶ 89-100 (1988); Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd. 3084, 3087-88 ¶¶ 30-34 (1990); In the Matter of Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, Memorandum Opinion and Order, 8 FCC Rcd. 8697 (1993).

[20] Iowa Utilities Board, et al. v. FCC, Opinion at 116, July 18, 1997 (8th Cir.).

[21] Petition at ii.

[22] Id.

creation of some kind of "transitional safeguard."[23] Read carefully, however, it is clear that MCI is not really looking for anything at all "transitional" in nature.

For example, in one articulated request for relief, MCI requests that "the Commission initiate a rulemaking to craft an appropriate nondiscrimination rule that can be equally applied to ILEC and CLEC provision of billing and collection services offered to providers of [IXC] services to non-subscribed customers."[24] There is no mention there of a "transitional" or "interim" component to the requested relief.[25]

While elsewhere in MCI's Petition, it seeks to understate the significance of its Petition,[26] certain of its references belie that understatement. For example, MCI is clearly troubled by the fact that many CLECs have no billing and collections contracts with IXCs "which greatly complicates the delivery of non-subscribed services."[27] The clear implication of its Petition is that it wants an obligation to bill for such services imposed on these CLECs.[28] And, MCI's references to LEC billing for affiliates (including Section 272 affiliates)[29] suggests that MCI, in fact, is seeking to impose an affirmative billing obligation on carriers for some indeterminate

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[23] Id.

[24] Id.

[25] This is consistent with the MCI statement of its position to Chairman Hundt wherein it stated that "the Commission must implement rules requiring all LECs to provide billing and collection for non-subscribed services on a non-discriminatory basis." MCI Hundt Letter at 15.

[26] Petition at 1 ("MCI seeks a minimally intrusive, transitional safeguard"), 11, 15.

[27] Id. at i.

[28] See id. at 10. MCI's analysis with respect to CLEC obligations.

amount of time and to buy time regarding billing for IXC non-subscribed services between now and the time there is an actual Section 272 affiliate in place. At that point, MCI assumes that the nondiscrimination obligation associated with Section 272(c)(1) will provide it with indeterminate billing and collections services for such billings, to the extent such billings are done for the affiliate.

Indeed, other than MCI's own professed "search" for billing alternatives, there is nothing about the MCI proposal that is – in any absolute terms – temporary. Rather, the Petition seeks to require that ILECs and new-entrant CLECs be forced to bill and collect for IXCs' services where the IXCs themselves have no interest or incentive to bill for their own offerings. Neither ILECs nor CLECs should have to subsidize the IXCs' own provision of services in this regard.

III. MCI INAPPROPRIATELY SEEKS THIRD-PARTY SUBSIDIZATION OF IXC SERVICES IN LIEU OF SELF-HELP

A. LECs Should Not Be Required To Subsidize IXC Offerings

IXCs – those entities that developed and promoted the non-subscribed product/service offerings and who benefit from the substantial revenues associated with their delivery – should bear the costs of developing internal billing systems to bill for these services or should be satisfied with the general commercial practice associated with deregulated offerings, i.e., the process of contract negotiation for services rendered. They should not be permitted to pocket the savings they enjoy by being relieved from the total costs associated with billing for interexchange non-subscribed services to increase their bullish participation in local exchange

[29] Id. at 13-14.

services,[30] while simultaneously demanding that their competitors be relegated to serfs providing a necessary component of any successful product offering – billing and collecting for the service rendered.

While MCI proudly and confidently asserts the profitability of non-subscribed services to the IXC industry, it simultaneously asserts that it is "not practical" for the providers of those services to directly bill and collect for them[31] because it is "an expensive undertaking."[32] Because of that fact, it wants to scuttle rights previously negotiated between competent parties (which it characterizes as an action constituting "no harm" to the other party to the contract)[33] and enlist regulatory prescriptions in its efforts to keep its competitive costs of doing business to a bare minimum.

MCI plaintively bemoans the contractual negotiation process associated with non-regulated service offerings and asserts that the LECs – not the IXCs demanding the referenced services – are the culprits. These companies, MCI asserts are attempting "to secure an unparalleled competitive advantage as these LECs enter interexchange markets."[34] MCI is, apparently, no student of irony.

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[30] MCI's Petition argues that it should not be required to bear the total delivery costs associated with interexchange non-subscribed services, presumably to free up additional monies for investments to support local exchange services. See note 12, supra.

[31] Petition at 6.

[32] Id. at 7.

[33] Id. at 13.

[34] Id. 2.

The irony lies in the fact that it is not the LECs who are seeking unparalleled competitive advantages, it is MCI. Ignoring the lawfully-endorsed concept of privately negotiated contracts, with termination clauses affording rights to the parties to the contract,[35] MCI here seeks the aid of the heavy hand of regulatory authority in order to secure unparalleled competitive advantages for IXC non-subscribed services (competitive services in their own right) through the labor of others. It seeks to avoid appropriate business expenses associated with the provisioning of its services, services which – unlike its more profitable and "relationship-friendly" PIC'd services – carry higher billing and customer care costs.[36] Rather, those costs it wants to pass off to the LECs.[37] In biblical terms, MCI wants the wheat; the chaf can go to the LECs.

If, in fact, the provision of non-subscribed services inherently entails unbillable and uncollectible charges at a rate higher than PIC'd services and

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[35] The "termination for convenience" clause referenced by MCI (at 6) was itself the subject of prior negotiations. Yet, MCI would now have this Commission undo the rights afforded parties under that provision and substitute, in the place of those negotiated rights, a regulatory mandate that billing continue and at a prescribed price, no less.

[36] Indeed, MCI acknowledges that the "costs of bad debt" represent "a substantial problem for non-subscribed services because of low collectibility margins." Petition at 7, 8. Certainly, LECs do incur more substantial costs in servicing such billing. For example, "Inquiry" services are generally offered with respect to such billing, while IXCs perform this customer contact on their own for their PIC'd services.

[37] MCI objects to contractual negotiations where the willingness to bill is based on volume requirements, which would clearly include PIC'd traffic billing. Id. at 14. Volume requirements, however, are a standard negotiable item in billing negotiations with prices often being dependent on volume.

presents more "opportunities for fraud and service theft,"[38] then it might be entirely appropriate for a carrier to impose "billing and collections surcharges"[39] on such services, driving the costs of the offering to the entity causing them and/or benefiting from the general ubiquitous nature of the service offering. Furthermore, if the "true up" of the actual total-product-delivery costs for non-subscribed services renders the offerings less profitable and results in some service providers ceasing or limiting such service offerings, one would witness nothing more than the consequences of reactions to true economic signals in a competitive environment.

But, rather than accommodate the operation of rational economics, MCI wants all the benefits of a profitable service with none of the responsibilities for creating one. Rather, in the name of a "structural failure in the delivery of efficient and economical, non-subscribed long-distance services"[40] – something others might describe as a product design and delivery flaw – MCI would impose obligations on CLECs because of unscrupulous end users,[41] and would deprive LECs, engaged in billing and collections services in a non-regulated capacity, of any of the rights mutually negotiated under existing contracts and the business discretion afforded other billing providers: the ability to determine what they will bill for and the price for which they will bill it. And, it would have the Commission allow competitive

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[38] Id. at 10.

[39] Id.

[40] Id. at 11.

[41] Id. This is one of the most bizarre arguments to date. Assuming CLECs were willing to provide BNA on a reasonable basis (something MCI asserts is not always

service providers – which the IXCs clearly are – to have those competitive services subsidized by others so that the IXCs' services "would [remain] profitable,"[42] in a situation where they otherwise would not be.

The Commission should decline MCI's invitation to subsidize its competitive offerings through the conscripted labor of unaffiliated entities. It should leave the matter of third-party billing to contractual resolution. Indeed, contractual resolution is clearly the appropriate vehicle to resolve differences of opinion regarding non-common carrier offerings, which third-party billing and collection services clearly are.[43]

B. Alternative Billing Arrangements

Because of its assertion that direct remittance is simply not a viable alternative billing and collection vehicle for non-subscribed services, MCI asserts that some type of "all-carrier . . . clearinghouse"[44] will need to be created for such billing to be able to be done effectively and efficiently.[45] As with any industry effort,

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the case), why a CLEC should necessarily lend its services to a competitive IXC to protect the IXC against a product design or fulfillment flaw is far from obvious.

[42] Id. at 7. The subsidization is obvious because MCI asserts that certain customer utilization of non-subscribed services results in a "positive revenue stream" only as the result of LEC billing and collection. Id. at 8.

[43] See In the Matter of Detariffing Billing and Collection Services, Report and Order, 102 FCC 2d 1150, 1151 ¶ 1 (1986) ("Report and Order").

[44] Petition at 6.

[45] U S WEST is unclear why the IXC "industry" must necessarily get together to determine ways to bill for the services they each render individually, but it may be the case that this would provide some efficiencies of scope and scale to non-subscribed services billing, similar to those being sought by ESPs and 900 service providers.

MCI acknowledges (U S WEST is gratified to see) that such would be a complex process, requiring substantial negotiations and industry consensus.[46]

But it is not appropriate to mandate that LECs "cover" for IXCs in the interim. While MCI asserts that "based on economies of scale and collection capabilities unavailable to any other potential provider," LEC-provided billing and collection services have "ensured that no market for third-party billing and collection could develop,"[47] this is simply not the case. IXCs have always been free to do their own billing, and some have – particularly in the more lucrative PIC billing environment. It should not be a staple of regulatory jurisprudence that companies can undertake those product fulfillment obligations they want but refrain from engaging in those with high fulfillment costs, demanding that others provide those aspects of product fulfillment so as to assure the company offering the product better "profitability."

Furthermore, IXCs have always been free – especially as it was obvious that local competition was impending – to begin work on a billing clearinghouse. Their failure to have explored alternative billing sources is not a problem of the LECs' making and the LECs should not be mandated to provide the solution for this lack of business planning.[48]

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[46] Petition at 6, 9-10 ("MCI does not underestimate the complexities entailed in creating such a system.")

[47] Id. at 8.

[48] MCI does, of course, assert that it has "examined" other types of billing arrangements. Id. at 9. However, it provides no information as to when it began its "examination" or whether that "examination" involved internal feasibility analyses or actual exploratory negotiations with others. And, its announcement that it

IV. THIRD-PARTY BILLING AND COLLECTIONS SERVICES ARE NOT COMMON CARRIER SERVICES AND SHOULD REMAIN SUBJECT TO PRIVATELY NEGOTIATED CONTRACTS

A. MCI Confuses Third-Party Billing With Billing For One's Services

Repeatedly, MCI confuses the act of billing and collecting for one's own services with third-party billing and collections. This is a fundamental error in its logic. Indeed, from the Commission's initial inquiry into the matter of billing and collections, the Commission drew the distinction between billing for oneself (which it described as a necessary incidental activity to the provision of one's service) and billing for unaffiliated third parties.[49]

Ignoring this basic distinction, MCI makes the incredible argument that – if a LEC chooses to terminate a billing and collection agreement, which it may be well contractually and lawfully permitted to do, that that LEC "should not be permitted to provide a billing and collection service to itself."[50] This is quite absurd.

A LEC has the lawful right, indeed the obligation, to collect for its tariffed and regulated charges. In so doing, it does not engage in a "service" to itself. Rather, it engages in conduct necessary and incidental to its rendition of service.

On the other hand, that same LEC has no legal obligation – beyond its contractual commitments – to bill for unaffiliated third parties.

"intends to explore" the creation of a clearinghouse (id.) does not explain why the exploration did not begin some time ago.

[49] See Report and Order, 102 FCC 2d at 1152 ¶ 2 ("Billing and collection for a carrier's own communications offering is an incidental part of the provision of a communication service.").

[50] Petition at ii, 14.

V. CONCLUSION

Particularly in light of the broad, general issues being investigated and litigated as a result of the Telecommunications Act of 1996, as well as limited resources to address those issues, U S WEST should not have to become embroiled in a Petition making allegations about practices of some generic class of LECs.

Respectfully submitted,

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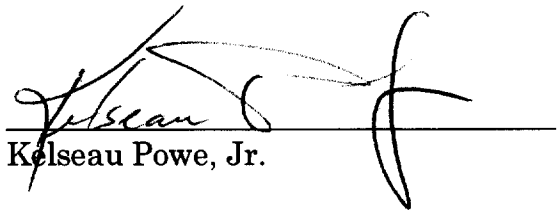
July 25, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of July, 1997, I have caused a copy of the foregoing **OPPOSITION OF U S WEST, INC.** to be served via first-class U.S. Mail, postage-prepaid, upon the persons listed on the attached service list.



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